

## **Alabama Drug & Alcohol Testing General Guidelines**

Although such programs are not mandatory, employers may elect to have a drug-free workplace program, and doing so may qualify the employer for a five-percent premium discount on workers' compensation insurance. Employer's policies can include testing of all job applicants, testing of all applicants for certain classes of jobs, random drug testing, testing upon reasonable suspicion, testing as part of routine medical examinations, or testing as a follow-up to employee assistance programs unless the employee entered the program voluntarily entered the program. If the employer has a program and an employee has caused or contributed to an on-the-job injury that resulted in a loss of work time, the employer must require the employee to submit to a substance abuse test.

Notice of testing.--Prior to testing, all employees and job applicants for employment must be given a onetime notice of testing. In addition, all employees must be given a written policy statement from the employer .

Newly implemented programs.--An employer not having a substance abuse testing program in effect on July 1, 1996, must ensure that at least 60 days elapse between a general one-time notice to all employees that a substance abuse testing program is being implemented and the beginning of the actual testing. An employer having a substance abuse testing program in place prior to July 1, 1996, will not be required to provide a 60-day notice period .

A drug-free workplace program must contain all the following elements:

- (1) a written policy statement
- (2) substance abuse testing
- (3) resources of employee assistance providers
- (4) employee education
- (5) supervisor training

Compliance.--All testing conducted by an employer must be in conformity with the standards and procedures established in Alabama's drug-free workplace program law and all applicable rules adopted by the State Department of Industrial Relations, including confidentiality standards.

Hair Samples.--Hair sample drug testing is permitted if done in accordance with the state's guidelines for hair specimen collection. Hair testing drug policies must apply to all similarly situated applicants or employees regardless of position or classification. Additional testing is allowed on some but not all similarly situated employees if an employer has a rational basis for doing so.

Vacancy announcements.--An employer must include notice of substance abuse testing on vacancy announcements for those positions for which testing is required.

Notice in the workplace.--A notice of the employer's substance abuse testing policy must

also be posted in an appropriate and conspicuous location on the employer's premises.

§25-5-330 (1995)

Provides a 5 percent discount to employers who establish a drug-free workplace in compliance with the act.

§25-5-51 (1993)

An employer may deny benefits if the employee's injury was due to intoxication from the use of alcohol or impaired by illegal drugs.

§25-4-78(3)(a) (1995)

An employee may be partially disqualified from receiving benefits if the employee is discharged for misconduct connected to work. Misconduct includes the use of illegal drugs or failing to cooperate with a drug test after a previous warning has been given.

### **Alaska Drug & Alcohol Testing General Guidelines**

An employer may only carry out the testing or retesting for the presence or evidence of use of drugs or alcohol after adopting a written policy for the testing and retesting and informing employees of the policy. The employer may inform employees by distributing a copy of the policy to each employee subject to testing or making the policy available to employees in the same manner as the employer informs its employees of other personnel practices, including inclusion in a personnel handbook or manual or posting in a place accessible to employees. The employer must inform prospective employees that they must undergo drug testing.

The written policy on drug and alcohol testing must include, at a minimum:

1. a statement of the employer's policy respecting drug and alcohol use by employees
2. a description of those employees or prospective employees who are subject to testing
3. the circumstances under which testing may be required
4. the substances as to which testing may be required
5. a description of the testing methods and collection procedures to be used, including an employee's right to a confirmatory drug test to be reviewed by a licensed physician or doctor of osteopathy after an initial positive drug test result
6. the consequences of a refusal to participate in the testing

7. any adverse personnel action that may be taken based on the testing procedure or results

8. the right of an employee, on the employee's request, to obtain the written test results and the obligation of the employer to provide written test results to the employee within five working days after a written request to do so, so long as the written request is made within six months after the date of the test

9. the right of an employee, on the employee's request, to explain in a confidential setting, a positive result; if the employee requests in writing an opportunity to explain the positive test result within 10 working days after the employee is notified of the test result, the employer must provide an opportunity, in a confidential setting, within 72 hours after receiving the employee's written notice, or before taking adverse employment action

10. a statement of the employer's policy regarding the confidentiality of the test results.

The employer's policy may provide for testing in the course of investigations, upon reasonable suspicion of drug or alcohol use that adversely affects job performance or the work environment, and/or random testing of employees or groups of employees.

§23.10600-23.10.699 (1997)

Provides protection to employers who establish a drug and alcohol policy and testing program in compliance with the act. Collection, testing and confidentiality procedures are mandated.

§23.30.080 (1993)

An employer may not be liable for an employee's injury or death when the injury arises from the employee's willful intoxication.

### **Arizona Drug & Alcohol Testing General Guidelines**

In Arizona, within the terms of a written policy, an employer may require the collection and testing of samples for any job-related purposes consistent with business necessity including:

- i. Investigation of possible individual employee impairment.
- ii. Investigation of accidents in the workplace.

Employees may be required to undergo drug testing or alcohol impairment testing for accidents if the test is taken as soon as practical after an accident and the test is administered to employees whom the employer reasonably believes may have contributed to the accident.

Maintenance of safety for employees, customers, clients or the public at large.

Maintenance of productivity, quality of products or services or security of property or information.

Reasonable suspicion that an employee may be affected by the use of drugs or alcohol and that the use may adversely affect the job performance or work environment.

Employees or groups of employees may be required to undergo drug testing on a random or chance basis.

Testing or retesting for the presence of drugs or alcohol by employers must be carried out within the terms of the employer's written drug and alcohol testing policy that has been distributed to every employee subject to testing or that has been made available to employee in the same manner as the employer informs employees of other personnel practices, including inclusion in a personnel handbook or manual or posting in a place accessible to employees. Prospective employees must be informed that as employees they must undergo drug testing. An employer may take adverse employment action based on a positive drug or alcohol impairment test, or on the refusal of an employee or prospective employee to provide a sample.

§23-493 (1999)

Department of Corrections employees and job applicants subject to testing.

§23-493 (1994)

Private-Sector Drug Testing and Alcohol Impairment Act.

A voluntary law that provides legal protection to employers for acting in good faith based on the results of a positive drug or alcohol test, provided the program meets the requirements of the act.

HB 2306 (2003)

Removes restrictions on employer's ability to discipline or discharge an employee involved in a work-related injury who tested positive for drugs or alcohol during the time the injury occurred.

§23-619.01 (1993)

An individual may be disqualified from receiving benefits in the employee is discharged for willful or negligent misconduct associated with employment. Misconduct includes, repeated intoxication (alcohol or use of illegal drugs) on the employer's premises or when reporting to work.

## **Arkansas Drug & Alcohol Testing General Guidelines**

If an Arkansas employer implements a drug-free workplace program that includes required notice, education and procedural requirements for testing for drugs and alcohol, the employer may require an employee to submit to a test for the presence of drugs or alcohol. If a drug or alcohol is found to be present in the employee's system at a level prescribed by statute or by rule, the employee may be terminated and forfeits eligibility for workers' compensation medical and indemnity benefits.

A drug-free workplace program must require the covered employer to notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in the employee's body. If an injured employee refuses to submit to a test for drugs or alcohol, the employee forfeits eligibility for workers' compensation medical and indemnity benefits. In the event of termination, an employee is entitled to contest the test results before the Department of Labor.

Sixty days must elapse between a general one-time notice to all employees that an employer is instituting a drug and alcohol testing program and the effective date of the program. In addition, notice of drug and alcohol testing must be included on vacancy announcements for positions for which drug and alcohol testing is required. Notice of an employer's drug and alcohol testing policy must also be posted in an appropriate and conspicuous location on the covered employer's premises and copies of the policy must be made available for inspection by employees or job applicants during regular business hours in the employer's personnel office or other suitable location.

Employers who implement a drug-free workplace policy will receive a credit of at least five percent against its workers' compensation premium charge.

§11-14-101 (1999)

Establishes voluntary drug free workforce program.

§11-9-401(a), 11-9-707

An employer may use an employee's intoxication or being under the influence of drugs as a defense. Must prove the injury was substantially caused by the worker's intoxication at the time of the injury.

§11-14-101 (1999)

Employers with acceptable drug-free workplace programs drug-free workplace programs may qualify for a 5% discount on workers' compensation premiums.

§11-10-514(b) (1993)

An employee may be denied benefits if he/she is discharged for using alcohol or controlled substances on the job, or reporting to work while intoxicated, including use of controlled substances.

## **California Drug & Alcohol Testing General Guidelines**

California law contains no general provision related to drug/alcohol testing, but it does have a drug-free workplace law that applies to government contractors.

### **Testing of Drivers of School Vehicles**

Those employees who are drivers of "school transportation vehicles" (other than school bus drivers, who already are covered by the U.S. Department of Transportation's [DOT] Federal Motor Carrier Safety Administration's [FMCSA] drug and alcohol testing regulations), who are employed to drive such vehicles and who are not otherwise required to participate in a DOT testing program for controlled substances and alcohol must be subject to testing consistent with these requirements applicable to school bus drivers under Title 49 of the Code of Federal Regulations (the DOT regulations).

### **On-Site Testing**

The California Department of Health interprets the state's laboratory licensing law to prohibit any drug test not performed in a certified laboratory or by a licensed physician. Cal. Bus. & Prof. Code §1206 Supp. 1999).

### **Alcohol and Drug Rehabilitation**

Employers with 25 or more employees must accommodate employees who wish to participate in a substance abuse treatment program, provided the accommodation does not place an undue hardship on the employer. Employees are not entitled to time off with pay for these purposes although the employee may use accrued sick time. Employers must make a reasonable effort to safeguard employees' privacy. CAL. LAB. CODE §1025 et. seq.

In addition, the following guidelines for drug testing should be considered:

- Pre-employment testing can be conducted with little legal risk as long as applicants have advance notice of testing, the sample collections process respects individual privacy, and access to test results is limited.
- "Reasonable Suspicion" testing, based on accidents or abnormal or erratic behavior, MAY be allowable. However, the conservative legal position is to use it only in safety-sensitive positions.
- Random or periodic testing will probably violate the employee's right of privacy unless mandated by federal regulations.

### **Gov't Code §8350-8356 (1993)**

Requires all state contractors and grantees to implement a drug free workplace policy and establish an employee drug awareness education program.

### **Labor Code §3600, §5705**

Benefits may be denied if an employee's injury was caused by intoxication or the unlawful use of a controlled substance. Employer carries the burden of proof.

### Unemp. Ins. Code §2626

An individual may be disqualified from receiving unemployment compensation benefits if discharged for being intoxicated while on work or for certain behavior related to intoxication.

### **Colorado Drug & Alcohol Testing General Guidelines**

Job applicants. No employer may require a prospective employee to submit to a urinalysis drug test as part of its job application procedure unless:

1. The applicant is informed in writing at the time of application of the employer's intent to conduct a urinalysis drug test;
2. The test is conducted in accordance with established procedures; and
3. The applicant is given a copy of any positive urinalysis test result, but the result is not disclosed by the employer or its employees to anyone other than the applicant.

Employees. Generally, for employees, random testing is not permitted but testing may be done upon reasonable suspicion of being under the influence. There is an exception for employees in safety-sensitive positions and those participating in an employee assistance program. An employee who left employment and is currently being rehired by the same employer within 12 months of termination is excluded from the category of prospective employees. Such persons are considered employees for purposes of the state's drug testing law.

### §8-42-112(1)(c)

Benefits may be reduced when an injury results from the intoxication of an employee.

### § 8-73-108(5) (1993)

An employee may be disqualified from receiving benefits if the employee engages in off the job use of alcohol or controlled substances to a degree that it interferes with job performance or on the job use of alcohol or controlled substance.

### **Connecticut Drug & Alcohol Testing General Guidelines**

No employer may require a prospective employee to submit to a urinalysis drug test as part of its job application procedure unless:

1. The applicant is informed in writing at the time of application of the employer's intent to conduct a urinalysis drug test;
2. The test is conducted in accordance with established procedures; and
3. The applicant is given a copy of any positive urinalysis test result, but the result is not disclosed by the employer or its employees to anyone other than the applicant.

#### Requesting that an employee submit to drug testing

Generally, for employees, random testing is not permitted but testing may be done upon reasonable suspicion of being under the influence. There is an exception for employees in safety-sensitive positions and those participating in an employee assistance program. An employee who left employment and is currently being rehired by the same employer within 12 months of termination is excluded from the category of prospective employees. Such persons are considered employees for purposes of the state's drug testing law.

An employer may request that an employee submit to urinalysis drug testing where the employer has reasonable suspicion that the employee is under the influence of drugs or alcohol, which adversely affects or could adversely affect the employee's job performance. However, if the employer does not maintain the requisite reasonable suspicion, the employer could be subject to liability for violating the employee's right to privacy.

Although Connecticut appellate courts have yet to explicitly define reasonable suspicion, one Connecticut Superior Court found an employer did not have the requisite reasonable suspicion to require an employee to submit to a drug test even though the employee: (1) stole from the company; (2) lied to supervisors; (3) had poor attendance; (4) borrowed substantial sums of money from the company coffee fund and other employees; and (5) had "flare ups" with other employees. The same court noted that if the employer's reasonable suspicion was based upon the employee's history of past drug use, and/or indicators that the employee was under the influence - such as slurred speech, glassy eyes, unsteady walk - these factors may have justified the employer's mandatory drug test.

Under Connecticut law, though, if an employee validly consents to drug testing, the employee effectively waives his right to challenge whether the drug test was an unreasonable search in violation of his right to privacy. Courts utilize the totality of the circumstances test to determine whether an employee's consent is valid. Courts review the employee's words, acts, conduct and state of mind to ascertain whether the employee's consent to the drug test was a matter of free and unconstrained choice or a mere acquiescence to authority. Thus, where the totality of the circumstances demonstrates that an employee consents to a drug test, the employer need not have a reasonable suspicion to justify the test.

#### §31-51t (1992)

Prohibits certain types and testing. In general, testing is limited to employee's in high risk positions or where reasonable suspicion exists.



§31-275(1)(c) (1993)

Provides that disability or death due to use of alcohol or drugs is not a compensable injury.

§31-236 (1992)

An employee is ineligible for benefits if the employee was discharged for "just cause" or repeated willful misconduct.

### **Delaware Drug & Alcohol Testing General Guidelines**

Delaware law contains no general provision related to drug/alcohol testing. The state does have drug testing laws that apply to school bus drivers, Department of Corrections employees, and nursing home employees.

### **Florida Drug & Alcohol Testing General Guidelines**

Florida's drug-testing law is contained within its workers' compensation law - a law covering employers of four or more, except in the construction industry where the law covers employers of one or more.

Under the law employers may voluntarily implement drug-free workplace programs designed to lessen the frequency and severity of work-related injuries. If an employer implements a drug-free workplace program that includes notice, education and testing for drugs and alcohol following the rules for testing developed by the Workers' Compensation Division, the employer may require that an employee submit to a test for the presence of drugs or alcohol and, if a drug or alcohol is found to be present in the employee's system at (or above) a level prescribed by law, the employee may be terminated and forfeits eligibility for medical and indemnity benefits. In addition, the employer is eligible for reduced workers' compensation rates.

To qualify for reduced rates, an employer's policy must provide for testing of all job applicants, reasonable suspicion drug tests, and follow-up-tests for those participating in employee assistance programs unless the employee voluntarily entered the program. It may also provide for routine fitness-for-duty medical exams, including drug testing. A private employer may conduct random testing, or any other lawful testing, of employees for drugs.

§112.0455 (1996)

The Drug Free Workplace Act provides that any state agency may test certain employees and job applicants for the use of drugs. Does not require testing but mandates that any agency choosing to do so must comply with methods and procedures outlined.

§287.087

Provides that in situations where two or more bids of equal merit are submitted the business certifying it has implemented a Drug-Free Workplace program will be given preference in being awarded the contract.

§440.102 (1996)

Voluntary law that provides a 5 percent reduction in premiums to employers who implement and maintain a certified drug-free workplace program in accordance with the standards set forth in the Act.

Positive drug test results disqualifies an employee from receiving benefits.

§440.102 (1993)

An employee may be denied benefits if tested positive for drugs on a test conducted in accordance with the standards set forth under worker's compensation laws. A positive drug test constitutes misconduct.

§38B-2.017(5)(b) (1993)

Consideration is given to the illnesses of alcoholism and drug addiction in determining eligibility.

## **Georgia Drug & Alcohol Testing General Guidelines**

Employers do not have a legal duty to request an employee or applicant to undergo drug testing under the provisions of Georgia's drug-free workplace program law. However, if an employer requires or requests an employee or applicant to undergo testing, compliance with all of the applicable rules adopted by the State Board of Workers' Compensation is required.

Insurance discount.--Provided the procedures mentioned here are followed, employers implementing a drug-free workplace program qualify for certification for a five-percent premium discount under their workers' compensation insurance policy

A drug-free workplace program must contain the following elements:

1. a written policy statement
2. substance abuse testing
3. resources of employee assistance providers
4. employee education
5. supervisor training

Additionally, a drug-free workplace program must be implemented in compliance with the confidentiality standards provided in the law.

Random testing.--Under Georgia's drug-free workplace programs law, a private employer is not prohibited from conducting random testing or other lawful testing of employees.

Authorized testing.--Under Georgia's drug-free workplace program law, an employer may conduct the following types of tests in order to qualify for workers' compensation insurance premium discounts: testing of all job applicants, or all applicants for certain classes of jobs; reasonable suspicion drug tests; tests after a workplace injury or accident; and follow-up-tests for those participating in employee assistance programs. It may also provide for routine fitness-for-duty medical exams, including drug testing.

Employee assistance programs.--If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the program. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

If an employer does not have an employee assistance program, the employer must maintain a resource file of providers of other employee assistance, including drug and alcohol abuse programs, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems, and must notify the employee of the availability of this resource file. In addition, the employer must post in a conspicuous place a listing of providers of employee assistance in the area.

#### §50-24-1 (1993)

Contractors who receive state contracts in the amount of \$25,000 or more must certify they have implemented a substance abuse prevention program.

#### §45-20-90

Public employees in high-risk jobs may be subject to random drug testing. Refusal to submit to a random test or testing positive results in termination from employment.

#### §33-9-40.2 & §34-9-410

Voluntary law that provides a 7.5 percent discount on workers' compensation premiums to employers who have implemented a drug-free workplace program that is certified by the state Board of Workers' Compensation.

#### § 34-9-17 (1993)

Provides an employee may be disqualified from receiving benefits if his or her injury or death is due to intoxication or the use of controlled substances.

#### Act No. 378 (2005)

Removes the existing eight-year limitation on the application of the insurance premium discount for the insured with the drug-free workplace program.

## **Hawaii Drug & Alcohol Testing General Guidelines**

No third party may require, request, or suggest that any individual submit to a substance abuse test that does not meet all the requirements of Hawaii's drug testing law, except for third parties who are covered by any drug testing regulation promulgated by the Hawaii Department of Transportation or the U.S. Department of Transportation or any other federal agencies. All costs, including confirmatory testing costs, are to be paid for by the third party

### **§329B-1 (1993)**

Procedural guidelines regarding workplace substance abuse testing. Most regulations apply to the laboratory but the employer is required to use a laboratory that is certified by the Hawaii Dept. of Health or the Substance Abuse and Mental Services Admin. Of the USDHHS.

### **§431:14-103 (1997)**

Provides a discounts of at least 5 percent on premiums to employers who maintain an effective safety and health program. Does not specifically mention drug-free workplace but does direct the DOL to issue standards and rules.

### **§386-3**

Denies compensation if an employee's injury was incurred as a result of intoxication. Employer has burden to prove intoxication.

## **Idaho Drug & Alcohol Testing General Guidelines**

The Idaho Private Employer Alcohol and Drug-Free Workplace Act establishes voluntary drug and alcohol testing guidelines for private employers, although the state of Idaho and its political subdivisions may also conduct drug and alcohol testing of employees under the law.

It is lawful for a private employer to test employees or prospective employees for the presence of drugs or alcohol as a condition of hiring or continued employment, provided the testing requirements and procedures are in compliance with the Americans with Disabilities Act.

For each policy of worker's compensation insurance issued or renewed in Idaho on or after July 1, 1999, a reduction in the premium for the policy may be granted if the insurer determines the insured has established and maintains an alcohol and drug-free workplace program that complies with the requirements of the Idaho Private Employer Alcohol and Drug-Free Workplace Act.

Any testing for the presence of drugs or alcohol by a private employer must be carried out within the terms of a written policy that has been communicated to affected employees,

and is available for review by prospective employees.

The private employer must list the types of tests an employee may be subject to in its written policy, which may include, but are not limited to, the following: baseline; preemployment; post-accident; random; return to duty; follow-up; and reasonable suspicion.

Any employee or prospective employee who tests positive for drugs or alcohol must be given written notice of that test result, including the type of substance involved, by the private employer.

§72-1701-1715 (1997)

"Private Employer Alcohol and Drug-Free Workplace Act"

Voluntary law that permits employers to test employees and applicants for drugs and alcohol. Provides requirements for collection and testing. Limits employer liability for establishing a testing program in compliance with the act. Establishes that an employee who is discharged for a confirmed positive drug or alcohol test, refusing to be tested, adulterated or attempting to adulterate a test sample would be discharged for misconduct for purposes of unemployment insurance.

Chapter No. 224 (2004)

Adds to existing law relating to the Idaho Employer Alcohol and Drug-free Workplace Act to provide certain eligibility requirements for contractors relating to state construction contracts

§72-208

Payments may be reduced by 50% when the proximate cause of the injury is the employee's use of intoxicants.

SB 1119 (2003)

Provides that public employers who conduct drug and alcohol testing of all current and prospective employees shall qualify for and may be granted an employer Workers' Compensation premium reduction

## **Illinois Drug & Alcohol Testing General Guidelines**

It is not a violation of the Illinois Human Rights Act for an employer to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual is no longer engaging in the illegal use of drugs.

An employer has the right to:

1. prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;
2. require that employees not be under the influence of alcohol or be engaging in the illegal

use of drugs at the workplace;

3. require that employees behave in conformance with the requirements established under the federal Drug-Free Workplace Act of 1988 and the state Drug Free Workplace Act (the state act applies to employers holding a government contract or grant of \$5,000 or more, or having at least 25 employees):

4. hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such employer holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

5. require that, with respect to federal regulations regarding alcohol and the illegal use of drugs: (a) employees comply with the standards established in such regulations of the United States Department of Defense, if the employees of the employer are employed in an industry subject to such regulations; (b) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the employer are employed in an industry subject to such regulations; and (c) employees comply with the standards established in such regulations of the United States Department of Transportation, if the employees of the employer are employed in a transportation industry subject to such regulations.

Interaction with disability antidiscrimination law. Under the Illinois Human Rights Act, the term "handicap" cannot be applied to include any employee or applicant currently engaging in the illegal use of drugs, when an employer acts on the basis of such use. The above does not apply to circumstances where an employee or applicant for employment:

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use.

Medical exams. For purposes of Illinois' drug testing law, a test to determine the illegal use of drugs cannot be considered a medical examination. Nothing may be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

§132.211 (1993)

Drug-Free Workplace Act

Provides that employers who are awarded a state contract or grant must adopt an anti-

drug policy and program, and provide a copy of its policy. Does not specifically address drug testing.

## **Indiana Drug & Alcohol Testing General Guidelines**

In Indiana, a person, employer, employment agency, labor organization or joint labor-management committee may adopt or administer reasonable drug testing policies or procedures designed to ensure that an individual who has successfully completed a supervised drug rehabilitation program or who has otherwise been rehabilitated successfully or who is participating in a supervised rehabilitation program is no longer engaging in the illegal use of drugs.

An employer, employment agency, labor organization or joint labor-management committee may do the following:

1. Prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees.
2. Require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace.
3. Require that employees behave in conformance with the requirements established under the federal Drug-Free Workplace Act of 1988.
4. Hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that the entity holds other employees, even if the unsatisfactory job performance or behavior is related to the drug use or alcoholism of the employee.
5. With respect to federal regulations regarding alcohol and the illegal use of drugs, require that employees comply with the standards established in the regulations of the United States Department of Defense, Nuclear Regulatory Commission or Department of Transportation, if the employees of the covered entity are employed in an industry subject to those regulations, including complying with regulations, if any, that apply to employment in sensitive positions in the industry, in the case of employees of the covered entity who are employed in those positions

§22-3-2-8, 22-3-7-21 (1993)

Denies workers' compensation benefits to employees whose injury or death was caused by intoxication.

§22-4-15-1(d)

An employee who is discharged for "just cause" is disqualified from receiving benefits. "Just

cause" includes reporting to work under the influence of alcohol or drugs, consuming alcohol or drugs on the employer's premises during work hours.

## **Iowa Drug & Alcohol Testing General Guidelines**

Employers may conduct drug or alcohol testing as provided below:

Employers may conduct unannounced drug or alcohol testing of employees who are selected at random; during, and after completion of, drug or alcohol rehabilitation; upon reasonable suspicion; of prospective employees; as required by federal law or regulation or by law enforcement; or in investigating accidents in the workplace in which the accident resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under Iowa's occupational safety and health law, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed \$1,000.

Upon receipt of a confirmed positive drug or alcohol test result that indicates a violation of the employer's written policy, or upon the refusal of an employee or prospective employee to provide a testing sample, an employer may use that test result or test refusal as a valid basis for disciplinary or rehabilitative actions pursuant to the requirements of the employer's written policy and the requirements of Iowa's drug testing law.

A confirmed positive test result means, except for alcohol testing, the results of a blood, urine, or oral fluid test in which the level of controlled substances or metabolites in the specimen analyzed meets or exceeds nationally accepted standards for determining detectable levels of controlled substances as adopted by the federal substance abuse and health services administration. If nationally accepted standards for oral fluid tests have not been adopted, the standards for determining detectable levels of controlled substances for purposes of determining a confirmed positive test result will be the same standard that has been established by the FDA for the measuring instrument used to perform the oral fluid test.

A sample means a sample from the human body capable of revealing the presence of alcohol or other drugs, or their metabolites, which include only urine, saliva, breath and blood.

Drug or alcohol testing or retesting by an employer must be carried out within the terms of a written policy that has been provided to every employee subject to testing, and is available for review by employees and prospective employees. The employer's written policy must provide uniform requirements for what disciplinary or rehabilitative actions an employer will take against an employee or prospective employee upon receipt of a confirmed positive drug or alcohol test result or upon the refusal of the employee or prospective employee to provide a testing sample. The policy must provide that any action taken against an employee or prospective employee will be based only on the results of the



drug or alcohol test. The written policy must also provide that if rehabilitation is required as provided by law, the employer may not take adverse employment action against the employee so long as the employee complies with the requirements of rehabilitation and successfully completes rehabilitation .

Awareness program.--Employers must establish an awareness program to inform employees of the dangers of drug and alcohol use in the workplace and comply with certain requirements in order to conduct drug or alcohol testing.

In order to conduct drug or alcohol testing, an employer must require supervisory personnel of the employer involved with drug or alcohol testing to attend a minimum of two hours of initial training and to attend on an annual basis thereafter, a minimum of one hour of subsequent training. The training must include, but is not limited to, information concerning the recognition of evidence of employee alcohol and other drug abuse, the documentation and corroboration of employee alcohol and other drug abuse, and the referral of employees who abuse alcohol or other drugs to the employee assistance program or to the resource file of employee assistance services providers.

Recordkeeping. An employee, or a prospective employee, who is the subject of a drug or alcohol test conducted under Iowa's drug testing law pursuant to an employer's written policy and for whom a confirmed positive test result is reported must, upon written request, have access to any records relating to the employee's drug or alcohol test, including records of the lab where the testing was conducted and any records relating to the results of any relevant certification or review by a medical review officer. However, a prospective employee is entitled to records only if he or she requests them within 15 calendar days from the date the employer provided the prospective employee written notice of the results of a drug or alcohol test.

Posting. If an employer has an employee assistance program, the employer must post notice of the EAP in conspicuous places. If an employer does not have an EAP, it must post in conspicuous places a listing of multiple employee assistance providers in the area.

#### §730.5 (1998)

Authorizes most types of drug and alcohol testing provided that specific procedural and policy requirements are met. Employers who develop, implement and maintain programs in accordance with the provisions of the act are provided with immunity against any causes of action arising against the employer for actions taken pursuant to the program.

#### §85.16 (1993)

Provides that an employee may be disqualified from benefits coverage if the employee's injuries are caused by the employee's intoxication or use of drugs, or if the intoxication was a substantial factor in causing the injury.

#### §96.5(2)

Employee may be disqualified for benefits if discharged for misconduct in connection with work.

### **Kansas Drug & Alcohol Testing General Guidelines**

Kansas law contains no general provision related to drug/alcohol testing. Only public employers are covered by Kansas' drug testing law.

### **Kentucky Drug & Alcohol Testing General Guidelines**

Kentucky law contains no general provision related to drug/alcohol testing. However, it is a misdemeanor offense for a person to use a product to alter the results of a test designed to detect the presence of alcohol or a controlled substance in that person.

### **Louisiana Drug & Alcohol Testing General Guidelines**

Except in preemployment drug screening, the results of an initial screening drug test may not be used as a basis for rendering permanent mandatory or discretionary consequences to the individual submitting the specimen.

Drug test results must be reported directly from a certified laboratory to a qualified medical review officer.

Confirmed positive tests in preemployment drug testing may be reviewed by the medical review officer. If the employer chooses not to confirm a positive test result of a preemployment drug screen test, the employer must notify the preemployment applicant of the positive drug screen result and must offer the applicant the opportunity to pay for confirmation of that test and a review of that confirmation test by a medical review officer.

The medical review officer must review all confirmed positive drug testing results of employees and report such results to the employer in compliance with the National Institute on Drug Abuse (NIDA) guidelines or pursuant to statutory or regulatory authority.

Access to records. Any employee with a confirmed positive drug test result, upon written request, has the right of access within seven working days to records relating to drug tests and any records relating to the results of any relevant certification, review, or suspension/revocation-of-certification proceedings.

Rehabilitation. Employers may, but are not required to, afford an employee whose drug test

is certified positive by the medical review officer the opportunity to undergo rehabilitation without termination of employment .

Withholding. Louisiana allows employers to withhold from the wages of an employee the costs of preemployment medical exams and drug tests. The employee must sign a contract which fully explains the employer's right of reimbursement and authorizing the withholding if the employee resigns within 90 working days.

### **Maines Drug & Alcohol Testing General Guidelines**

Employers are not required to conduct substance abuse testing of employees or applicants, but may choose to do so in accordance with Maine's drug testing law. Supplemental policies may be established, provided such policies are not inconsistent with Maine's drug testing law. Maine's drug testing law does not prevent an employer from establishing rules related to the possession or use of substances of abuse by employees, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules, except when a substance abuse test is required, requested or suggested by the employer or used as the basis for any disciplinary action.

Applicant testing. An employer may require, request or suggest that an applicant submit to a substance abuse test only if:

1. the applicant has been offered employment with the employer; or
2. the applicant has been offered a position on a roster of eligibility from which applicants will be selected for employment. The number of persons on this roster of eligibility may not exceed the number of applicants hired by that employer in the preceding six months.

The offer of employment or offer of a position on a roster of eligibility may be conditioned on the applicant receiving a negative test result.

Probable cause. An employer may require, request or suggest that an employee submit to a substance abuse test if the employer has probable cause to test the employee. Only the employee's immediate supervisor, other supervisory personnel, a licensed physician or nurse, or the employer's security personnel have the authority to make a determination of probable cause. The supervisor or other person must state, in writing, the facts upon which this determination is based and provide a copy of the statement to the employee.

Random testing. In addition to testing employees on a probable cause basis, an employer may require, request or suggest that an employee submit to a substance abuse test on a random or arbitrary basis if at least one of the following conditions is met:

1. the employer and the employee have bargained for provisions in a collective bargaining

agreement that provide for random or arbitrary testing of employees; or

2. the employee works in a position the nature of which would create an unreasonable threat to the health or safety of the public or the employee's co-workers if the employee were under the influence of a substance of abuse.

Testing during rehabilitation. While the employee is participating in a substance abuse rehabilitation program either as a result of voluntary contact with or mandatory referral to the employer's employee assistance program or after a confirmed positive test result, substance abuse testing may be conducted by the rehabilitation or treatment provider as required, requested or suggested by that provider. Substance abuse testing conducted as part of such a rehabilitation or treatment program is not subject to Maine's drug testing law provisions, however, and the results of any substance abuse test administered to an employee as part of such a rehabilitation or treatment program may not be released to the employer.

Return to work. If an employee who has received a confirmed positive result returns to work with the same employer, whether or not the employee has participated in a rehabilitation program, the employer may require, request or suggest that the employee submit to a subsequent substance abuse test anytime between 90 days and one year after the date of the employee's prior test.

Employee assistance programs. Before establishing any substance abuse testing program for employees, an employer with over 20 full-time employees must have a functioning employee assistance program. Employers may meet this requirement by participating in a cooperative employee assistance program that serves the employees of more than one employer. Employee assistance programs must be certified by the Office of Substance Abuse.

Notice. Employers must provide employees with a copy of their written drug testing policy at least 30 days before any portion of the written policy applicable to employees takes effect. The employer must provide each employee with a copy of any change in a written policy at least 60 days before any portion of the change applicable to employees takes effect. The Department of Labor may waive the 60-day notice for the implementation of an amendment covering employees if the amendment was necessary to comply with law or if, in the judgment of the department, the amendment promotes the purpose of the law and does not lessen the protection of an individual employee.

If an employer intends to test an applicant, the employer must provide the applicant with a copy of the written policy before administering a substance abuse test to the applicant. The 30-day and 60-day notice periods provided for employees under Maine's drug testing law do not apply to applicants.

Notification of Test Results; Confirmation Tests - Those doing point-of-collection screening or confirmation tests must release the test results in compliance with the following: (1) immediate notification to the employee of a "preliminary" positive or negative test result;

(2) no notification to the employer of a "preliminary" positive test result until after it has been confirmed in another test; (3) similarly, no notification to the employer of a "preliminary" negative test result until after it has been confirmed in another test; and (4) confirmatory test results must be released immediately to both the employee and the employer.

## **Maryland Drug & Alcohol Testing General Guidelines**

Under Maryland's general drug testing law, employers requiring testing for job-related use or abuse of any controlled dangerous substance or alcohol must:

have the specimen tested by a laboratory that holds the required permit or, for a lab located outside of Maryland, that is certified or otherwise approved; and

at the time of testing, at the person's request, inform the person of the name and address of the laboratory that will test the specimen.

An employer who requires any person to be tested for job-related reasons for the use or abuse of any controlled dangerous substance may use hair derived from the human body as a specimen only for preemployment purposes, and if an employer uses hair as a specimen, the employer may not (1) use a specimen that is longer than one and one-half inches measured from the human body; or (2) use the specimen for any purpose other than testing for controlled dangerous substances.

**Positive test results.** Under Maryland's general drug testing law, an employer who requires any employee, contractor, or other person to be tested for job-related reasons for the use or abuse of any controlled dangerous substance or alcohol and who receives notice that an employee, contractor, or other person has tested positive for the use or abuse of any controlled dangerous substance or alcohol must, after confirmation of the test result, provide the employee, contractor, or other person with:

a copy of the laboratory test indicating the test results;

a copy of the employer's written policy on the use or abuse of controlled dangerous substances or alcohol by employees, contractors, or other persons;

if applicable, written notice of the employer's intent to take disciplinary action, terminate employment, or change the conditions of continued employment; and

a statement or copy of the statutory provisions permitting an employee to request independent testing of the same sample for verification of the test result.

The information required to be provided to the employee, contractor, or other person must be delivered to the employee, contractor, or other person either in person or by certified mail and within 30 days from the date the test was performed.

Beginning October 1, 2003, saliva will be added to the specimens permitted to be used for employment-related substance abuse testing.

### **Massachusetts Drug & Alcohol Testing General Guidelines**

Massachusetts law contains no general provision related to drug/alcohol testing.

### **Michigan Drug & Alcohol Testing General Guidelines**

Michigan law contains no general provision related to drug/alcohol testing.

### **Minnesota Drug & Alcohol Testing General Guidelines**

Private and public sector employers in Minnesota may not request or require an employee or job applicant to undergo drug and alcohol testing except as authorized by law. In addition, the law requires that testing be conducted by a testing laboratory that is licensed, accredited or certified pursuant to law and that testing not be done on an arbitrary and capricious basis.

Before requesting an employee or job applicant to undergo drug or alcohol testing, an employer must provide the employee or job applicant with a form, developed by the employer, on which to acknowledge that the employee or job applicant has seen the employer's drug and alcohol testing policy.

Applicant testing.--If a job applicant has received a job offer made contingent on the applicant passing drug and alcohol testing, the employer may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test .

Employee testing; positive results.--An employer may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.

Additionally, an employer may not discharge an employee for whom a positive test result

on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by the employer unless the following conditions have been met:

(1) The employer has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the employer after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency; and

(2) The employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.

Temporary suspension.--An employer may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of a confirmatory test and, if requested, a confirmatory retest, provided the employer believes that it is reasonably necessary to protect the health or safety of the employee, coemployees, or the public. An employee who has been suspended without pay must be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative.

Random Testing of Professional Athletes - Minnesota has a highly restrictive state drug testing law, one of only five in the United States. Heretofore, random drug testing was allowed only for employees in safety-sensitive positions. The Minnesota legislature expanded that in 2005 to include professional athletes. For those professional athletes subject to a collective bargaining agreement (e.g., the Twins, Vikings, Timberwolves, North Stars and the WNBA Lynx), the professional athlete can be subject only to testing consistent with the agreement.

### **Mississippi Drug & Alcohol Testing General Guidelines**

Employers are authorized to conduct the following types of drug and alcohol tests:

(1) Employers may require job applicants to submit to a drug and alcohol test as a condition of the employment application and may use a refusal to submit to a test or positive confirmed test result as a basis for refusal to hire.

(2) An employer may require all employees to submit to reasonable suspicion drug and alcohol testing. There is created a rebuttable presumption that the employer had reasonable suspicion to test for drugs if the specimen provided by the employee tested positive for drugs in a confirmatory drug test.

(3) An employer may require all employees to submit to neutral selection drug and alcohol testing.

An employer may require an employee to submit to neutral selection or routine drug and alcohol tests if the employee in the course of employment enters a drug abuse rehabilitation program, and as a follow-up to such rehabilitation, or if previous drug and alcohol testing of the employee within a 12-month period resulted in a positive confirmed test result, or the drug and alcohol test is conducted in accordance with the terms of an applicable collective bargaining agreement or contract that permits the employer to administer drug and alcohol tests on a neutral selection or routine basis.

Action upon test results. Within five working days after receipt of a positive confirmed test result report from the testing laboratory, an employer must, in writing, inform an employee of such positive test result and inform the employee in writing of the consequences of such a report and the options available. An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee on the basis of a positive test result that has not been verified by a confirmatory test. An employer may temporarily suspend or transfer an employee to another position after obtaining the results of a positive on-site initial test. An employer may discharge an employee after obtaining the results of a positive confirmed test.

Workers' compensation premium reduction. For each policy of workers' compensation insurance issued or renewed in Mississippi on or after July 1, 1997, a five-percent reduction in the premium for such policy may be granted by the insurer if the insured certifies that it has established and maintains a drug-free workplace program that complies with the requirements set forth below.

A drug-free workplace program must contain the following elements:

written policy statement (see below);

compliance with the substance abuse testing procedures as provided by law, if testing is initiated by the employer;

resources of employee assistance providers or other rehabilitation resources;

employee education;

supervisor training.

Notice requirements. An employer who conducts job applicant drug and alcohol testing must notify the applicant, in writing, upon application and prior to the collection of the specimen for the drug and alcohol test, that the applicant may be tested for the presence of drugs or their metabolites.



An employer must post notice of its drug testing policy in an appropriate and conspicuous location on the employer's premises.

### **Missouri Drug & Alcohol Testing General Guidelines**

Missouri law on drug/alcohol testing applies only to school bus drivers.

### **Montana Drug & Alcohol Testing General Guidelines**

Each of the following activities is permissible in the implementation of a qualified drug or alcohol testing program:

1. Applicant testing: An employer may test any prospective employee as a condition of hire.
2. Random testing: An employer may use random testing if the employer's controlled substance and alcohol policy includes one or both of the following procedures: (a) an employer or an employer's representative may establish a date when all salaried and wage-earning employees will be required to undergo controlled substance or alcohol tests, or both; (b) An employer may manage or contract with a third party to establish and administer a random testing process.
3. Follow-up testing: An employer may require an employee to submit to follow-up tests if the employee has had a verified positive test for a controlled substance or for alcohol.
4. Reasonable suspicion testing: An employer may require an employee to be tested for controlled substances or alcohol if the employer has reason to suspect that an employee's faculties are impaired on the job as a result of the use of a controlled substance or alcohol consumption.
5. Post-accident testing: An employer may require an employee to be tested for controlled substances or alcohol if the employer has reason to believe that the employee's act or failure to act is a direct or proximate cause of a work-related accident that has caused death or personal injury or property damage in excess of \$1,500.

Procedure.--An employer must provide an employee who has been tested under any qualified testing program described above with a copy of the test report. The employer is also required to obtain, at the employee's request, an additional test of the urine split sample by an independent lab selected by the person tested. The employer must pay for the additional tests if the additional test results are negative, and the employee must pay for

them if the additional test results are positive. The employee must be provided the opportunity to rebut or explain the results of any test.

No adverse action, including follow-up testing, may be taken by an employer if an employee presents a reasonable explanation or medical opinion indicating that the original test results were not caused by illegal use of controlled substances or by alcohol consumption. If the employee presents a reasonable explanation or medical opinion, the test results must be removed from the employee's record and destroyed.

Qualified testing programs must meet other procedural requirements imposed by the law.

Oral Fluids Testing Permitted; DOT Regulations Mirrored - Permitted specimen testing had been restricted to urine and breath, and now is expected to include oral fluids. Procedural requirements have to be at least as stringent as 49 CFR, part 40 (the DOT regulations) in regard to: (1) samples not covered by 49 CFR, part 40; (2) the testing program; and (3) the collection, transport, chain of custody, and confirmatory testing of non-urine samples. Finally, the testing methodology must be approved by the U.S. Food and Drug Administration.

### **Nebraska Drug & Alcohol Testing General Guidelines**

A public or private sector employer of six or more in Nebraska may not use the results of any test performed on the body fluids or breath of an employee, as directed by that employer, to deny any continued employment or in any disciplinary or administrative action unless there has been a confirmed positive drug or alcohol test, performed by a licensed or accredited clinic, laboratory or hospital. Test samples must be preserved in sufficient quantity for retesting for a period of at least 180 days.

Nothing in this law is to be construed as requiring that employers test employees for drug and alcohol use and this law is not to be considered as determinative of the cases or circumstances under which such tests may be given

### **Nevada Drug & Alcohol Testing General Guidelines**

Nevada's drug and alcohol testing law applies only to government employees.

### **New Hampshire Drug & Alcohol Testing General Guidelines**

New Hampshire law contains no general provision related to drug/alcohol testing.

### **New Jersey Drug & Alcohol Testing General Guidelines**

New Jersey's drug testing law applies only to Boards of Education.

### **New Mexico Drug & Alcohol Testing General Guidelines**

New Mexico's drug testing law applies only to government employees.

### **New York Drug & Alcohol Testing General Guidelines**

New York law contains no general provision related to drug/alcohol testing.

### **North Carolina Drug & Alcohol Testing General Guidelines**

A public or private employer in North Carolina that requests or requires an employee to submit to a controlled substance examination must comply with the procedural requirements of the law in collecting samples to be tested, in selecting the laboratory to be used to test the samples, in preserving samples (for at least 90 days from the time that the confirmed positive results of a test are mailed or delivered to the employer) and in maintaining a chain of custody with regard to each sample. However, no employer is, by virtue of this law, required to conduct controlled substance testing.

Reporting to State of CDL Driver Positives - North Carolina is one of the states continuing the new mini-trend of requiring drug-test positives for driver/employees with a commercial driver's license (CDL) to be reported to the state. An employer of any employee subject to the DOT regulations for the operation of commercial motor vehicles must report a positive test result for any required drug or alcohol test (under the FMCSA regulations) to the North Carolina Division of Motor Vehicles in writing within five business days after the employer's receipt of confirmation of the positive test.

The notification to the state must include: (1) the driver's name; (2) the driver's home

address; (3) the driver's license number; (4) the driver's Social Security number; and (5) the results of the drug or alcohol test. The state's response is to: (1) disqualify the driver from operating a commercial motor vehicle (until assessment and successful treatment by a substance abuse professional can be demonstrated); and (2) place a notation in the driver's record for two years. The driver has 20 days after his or her notice of disqualification from the state to request a hearing. If there is a request for a hearing, the disqualification will be stayed pending the hearing's outcome. However, the hearing is limited to issues of testing procedures and protocol.

### **North Dakota Drug & Alcohol Testing General Guidelines**

North Dakota's drug testing law applies to employers subject to the Worker's Compensation Act.

Reasonable suspicion testing.--If an employer or doctor has reasonable grounds to suspect an employee's alleged work injury was caused by the employee's voluntary impairment caused by use of alcohol or illegal use of a controlled substance, the employer or doctor may request that the employee undergo testing to determine if the employee had alcohol or a controlled substance in the employee's system at levels greater than the limit set by the United States Department of Transportation at the time of the injury.

If an employee refuses to submit to a reasonable request to undergo a test to determine if the employee was impaired, the employee forfeits all entitlement to workers' compensation benefits arising out of that injury.

### **Ohio Drug & Alcohol Testing General Guidelines**

Ohio's fair employment practices law does not prohibit an employer from adopting or administering reasonable policies or procedures, including, but not limited to, testing for the illegal use of any controlled substance, that are designed to ensure that an individual who has been successfully rehabilitated or who is participating in a supervised drug rehabilitation program is no longer engaging in the illegal use of a controlled substance.

However, Ohio's drug testing law does not encourage, prohibit, or authorize, and must not be construed as encouraging, prohibiting or authorizing, the conduct of testing for the illegal use of any controlled substance by employees, applicants, or other persons, or the making of employment decisions based on the results of that type of testing.

## **Oklahoma Drug & Alcohol Testing General Guidelines**

Oklahoma's Standards for Workplace Drug and Alcohol Testing Act does not require that employers conduct drug or alcohol testing, rather it states that employers that choose to conduct drug or alcohol testing must abide by its provisions. Exempt from the requirement that drug or alcohol testing be conducted according to state law is testing that is required by and conducted according to federal law or regulation. Further, collective bargaining agreements may provide greater protection for employees and job applicants than the protection provided by state law.

Employers are authorized to conduct all of the types of tests that follow: testing of all job applicants upon a conditional offer of employment; testing upon reasonable suspicion that the employee has violated the employer's written policy; post-accident testing if the employer has a reasonable suspicion that there was injury or damage as a direct result of the employee's use of drugs or alcohol; random testing; routine physical exams if required of all employees in a classification or group under a written policy; follow-up testing without prior notice if the employee had a confirmed positive result or participated in a drug or alcohol dependency treatment program.

No disciplinary action, except for a temporary suspension or a temporary transfer to another position, may be taken by an employer against an employee based on a positive test result unless the test result has been confirmed by a second test using gas chromatography, gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy as approved by rule of the State Board of Health, at the cutoff levels determined by Board rule.

An employer may take disciplinary action against an employee who refuses to undergo drug or alcohol testing

Employee assistance programs. Employers may not require employees to submit to drug or alcohol testing unless the employer provides its employees with an employee assistance program, either in house or through a contracted program, that, at a minimum, provides drug and alcohol dependency evaluation and referral services for substance abuse counseling, treatment or rehabilitation.

Notice. Employers implementing a drug or alcohol testing policy for the first time, or implementing policy changes, must provide at least 30 days' notice to employees prior to such implementation or changes.

No employer may request or require an applicant or employee to undergo drug or alcohol testing unless the employer has first adopted a written, detailed policy setting forth the specifics of its drug or alcohol testing program.

## **Oregon Drug & Alcohol Testing General Guidelines**

Tests used in Oregon to detect substance abuse must be performed in a licensed laboratory by qualified technical personnel. The results of this type of test are to be reported to the person who submitted the specimen (most likely the employer). All positive test results must be confirmed using a test designated by the Health Division for confirmatory testing.

If any substance abuse testing is done outside of the state, the person who uses the out-of-state test has the burden of showing that the test was performed using procedures that meet or exceed Oregon testing standards.

### **Pennsylvania Drug & Alcohol Testing General Guidelines**

Pennsylvania law contains no general provision related to drug/alcohol testing.

### **Rhode Island Drug & Alcohol Testing General Guidelines**

Applicant testing.--An employer may require a job applicant to submit to blood or urine testing if:

- (1) the job applicant has been given an offer of employment conditioned on the applicant's receiving a negative test result;
- (2) the applicant provides the test sample in private, outside the presence of any person; and
- (3) positive tests are confirmed by means of gas chromatography/mass spectrometry or technology recognized as being at least as scientifically accurate.

Testing of employees. -- No employer in Rhode Island may, either orally or in writing, request, require or subject an employee to submit a sample of the employee's urine, blood or other bodily fluid or tissue for testing as a condition of continued employment. An employer may, however, require a specific employee to submit to such testing if the following requirements are met:

1. The employer has reasonable grounds to believe, based on specific objective facts, that the employee's use of controlled substances is impairing the employee's ability to perform his or her job;
2. The employee provides the test sample in private, outside the presence of any person;
3. Testing is conducted in conjunction with a bona fide rehabilitation program;

4. Positive test results are confirmed;
5. The employer informs the employee that the employee has the opportunity to have the sample tested or evaluated by an independent testing facility at the employer's expense; and
6. The employer provides the employee with a reasonable opportunity to rebut or explain the results.
7. The employer has promulgated a drug abuse prevention policy that complies with requirements of Rhode Island's drug testing law.
8. The employer keeps the results of any test confidential, except for disclosing the results of a "positive" test only to other employees with a job-related need to know, and to defend against any legal action brought by the employee against the employer.

Nothing in this law prohibits drug testing that is required by federal law, so long as the testing procedure complies with all state law provisions that are not clearly inconsistent with the applicable federal law.

### **South Carolina Drug & Alcohol Testing General Guidelines**

In South Carolina, an employer may establish a drug prevention program in the workplace pursuant to the provision establishing merit rating for workers' compensation insurance that provides a credit of at least five percent for an insured that has substance abuse prevention program, that will include:

a substance abuse policy statement that balances the employer's respect for individuals with the need to maintain a safe, productive and drug-free environment. The intent of the policy is to help those who need it while sending a clear message that the illegal use of nonprescription controlled substances or the abuse of alcoholic beverages is incompatible with employment at the specified workplace; and notification to all employees of the drug prevention program and its policies at the time the program is established by the employer or at the time of hiring the employee, whichever is earlier.

The testing procedure established by the insurer, employer or his designee, or approved by the director, must include a provision for random sampling of all persons who receive wages and compensation in any form from the employer and must provide for a second test to be administered within 30 minutes of the administration of the first test. Positive test results must be provided in writing to the employee within 24 hours of the time the employer receives the test results. Each employer must keep records of each test for up to one year.

Confidential communications. All information, interviews, reports, statements, memoranda

and test results, written or otherwise, received by the employer through a substance abuse testing program are confidential communications, but may be used or received in evidence, obtained in discovery or disclosed in any civil or administrative proceeding.

Drug-free workplace. The state also has a drug-free workplace law that applies only to state contractors.

### **South Dakota Drug & Alcohol Testing General Guidelines**

Testing of Public-Sector Job Applicants - South Dakota, which heretofore had no state laws on drug testing, enacted a simple and straightforward law regarding testing of state job applicants. Drug screening of job applicants for designated public-sector facilities was established. Notices and advertisements regarding job openings at these state facilities must include the requirements of the drug testing program. The Commissioner of the South Dakota Bureau of Personnel has rule-making authority regarding the drug testing procedures, and only the Commissioner can provide test results to job applicants, which he or she must do upon written request.

### **Tennessee Drug & Alcohol Testing General Guidelines**

Tennessee's drug-free workplace law applies to employers covered by the state's workers' compensation law who choose to maintain drug-free workplace programs and who include on the posted notice of policy a specific statement that the policy is being implemented pursuant to Tennessee's drug-free workplace law.

If an employer implements a drug-free workplace program in accordance with Tennessee's drug-free workplace law that includes notice, education, and procedural requirements for testing for drugs and alcohol pursuant to rules developed by the Division of Workers' Compensation, the covered employer may require the employee to submit to a test for the presence of drugs or alcohol. If a drug or alcohol is found to be present in the employee's system at a level prescribed by statute or by rule adopted pursuant to Tennessee's drug-free workplace law, the employee may be terminated and forfeits eligibility for workers' compensation medical and indemnity benefits.

Workers' compensation premium discounts. Also, an employer who establishes and maintains a drug-free workplace program under Tennessee's drug-free workplace law may qualify for workers' compensation premium discounts.

Types of testing. To the extent permitted by law, a covered employer who establishes a drug-free workplace is required to conduct the following types of drug tests:



1. Job applicant drug testing.--A covered employer must require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire an applicant. Limited testing of applicants, only if it is based on a reasonable classification basis, is permissible in accordance with Division of Workers' Compensation rule.

2. Reasonable suspicion drug testing.--A covered employer must require an employee to submit to reasonable suspicion drug testing. If testing is conducted based on reasonable suspicion, the covered employer must promptly detail in writing the circumstances that formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation must be given to the employee upon request, and the original documentation must be kept confidential by the employer, and must be retained by the employer for at least one year.

3. Routine fitness-for-duty drug testing.--A covered employer must require an employee to submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the covered employer's established policy or that is scheduled routinely for all members of an employment classification or group.

4. Follow-up drug testing.--If an employee in the course of employment enters an employee assistance program for drug-related problems, or a drug rehabilitation program, the covered employer must require the employee to submit to a drug test as a follow-up to such program, unless the employee voluntarily entered the program. In those cases, the covered employer has the option not to require follow-up testing. If such testing is required, it must be conducted at least once a year for a two-year period after completion of the program. Advance notice of a follow-up testing date must not be given to the employee to be tested.

5. Post-accident testing.--After an accident that results in an injury, a covered employer may require the employee to submit to a drug test in accordance with Tennessee's drug-free workplace law.

Tennessee's drug-free workplace law does not preclude an employer from conducting any lawful testing of employees for drugs.

Discrimination. A covered employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer.

Likewise, a covered employer may not discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment for a drug-related problem, while under the employ of the covered employer, if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-

related problems, or entered a drug rehabilitation program .

**Employer protection.** An employee or job applicant whose drug test result is confirmed as positive is not, by virtue of the result alone, deemed to have a "handicap" or "disability" as defined under federal, state, or local handicap and disability discrimination laws.

A covered employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with Tennessee's drug-free workplace law is considered to have done so for cause. Nothing in Tennessee's drug-free workplace law may be construed to prevent a covered employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs, and taking action based upon a violation of any of those rules.

If an employee or job applicant refuses to submit to a drug test, the covered employer is not barred from discharging or disciplining the employee or from refusing to hire the job applicant

**Procedures.** All specimen collection and testing for drugs under Tennessee's drug-free workplace law must be performed in accordance with the procedures provided for by the U.S. Department of Transportation rules for workplace drug and alcohol testing.

#### **Drug Testing of Employee/Drivers for Childcare Agencies**

The Tennessee State Code was amended to require drug testing and a negative test result for any current employee or job applicant who is: (1) providing any form of transportation services for compensation to a childcare agency; or (2) engaging in any other form of driving services involving children in a childcare agency. The requirement applies to full- and part-time employees, substitute employees and contractor employees. The lone exception is emergency transportation services under limited circumstances, as deemed appropriate by the Tennessee Department of Human Services.

### **Texas Drug & Alcohol Testing General Guidelines**

Texas law contains no general provision related to drug/alcohol testing. However, employers with 15 or more employees who have workers' compensation insurance coverage must adopt a policy designed to eliminate drug abuse and its effects in the workplace. Employers must distribute a written copy of the policy to each employee.

**Reporting to State of CDL Positives** - Also embracing a legislative mini-trend, Texas has enacted a law requiring notification to the state of positive drug or alcohol tests for employee/drivers with a commercial driver's license (CDL). Employers required to do such testing (under the FMCSA's regulations), must report to the Texas Department of Safety: (1) a valid positive drug- or alcohol-test result; (2) a refusal-to- test; or (3) an adulterated, diluted or substituted specimen. The Department of Safety has confidentiality protocols.

Under TRC 644 252, forms regarding the reporting of valid positive tests and the release of reported positive test results are available on the Texas Department of Safety's website under "Commercial Vehicle Enforcement (CVE) Forms."

### **Utah Drug & Alcohol Testing General Guidelines**

It is not unlawful for a private sector employer in Utah to test employees or prospective employees for the presence of drugs or alcohol, in accordance with the provisions of the drug and alcohol testing law, as a condition of hiring or continued employment. However, employers and management in general must submit to the testing themselves on a periodic basis.

Within the terms of a written policy, an employer may require the collection and testing of samples for the following purposes:

investigation of possible individual employee impairment;

investigation of accidents in the workplace or incidents of workplace theft;

maintenance safety for employees or the general public;

maintenance of productivity, quality of products or services, or security of property or information.

Any drug or alcohol testing by an employer is to occur during or immediately after the regular work period of current employees and any time used for testing is to be considered work time for purposes of compensation and benefits. The employer must pay the cost of drug and alcohol testing, including the cost of transportation if testing is conducted at a place other than the workplace.

Upon receipt of a verified or confirmed positive drug or alcohol test result that indicates a violation of the employer's written policy, or upon the refusal of an employee or prospective employee to provide a sample, an employer may use that test result or refusal as the basis for disciplinary or rehabilitative actions.

### **Vermont Drug & Alcohol Testing General Guidelines**

Applicant testing. An employer cannot, as a condition of employment, require an applicant to submit to drug testing, administer such a test, or request or require an applicant to consent to any practice prohibited under Vermont's drug testing law unless all of the following conditions are met:

1. The applicant has been given an offer of employment conditioned on the applicant receiving a negative test result. A conditional offer of employment is not necessary if the applicant resides more than 200 air miles from the place the applicant is to be tested.
2. The test is given not less than 10 days from the date the applicant received written notice. The notice must list the drugs to be tested. The notice must also state that therapeutic levels of prescription drugs tested will not be reported. The notice may not be waived by the applicant.
3. The drug test is given as part of or in conjunction with a comprehensive physical examination, but the test and examination need not be taken or administered at the same time.
4. The drug test is administered in accordance with other procedures specified in the law.

Employee testing. An employer cannot, as a condition of employment, promotion or change of status of employment, or as an expressed or implied condition of a benefit or privilege of employment, require an employee to submit to drug testing, administer such a test, or request or require an employee to consent to any practice prohibited under Vermont's drug testing law unless all of the following conditions are met:

1. The employer or an agent of the employer has probable cause to believe the employee is using or is under the influence of a drug on the job.
2. The employer has available for the employee tested a bona fide rehabilitation program for alcohol or drug abuse and such program is provided by the employer or is available to the extent provided by a policy of health insurance or under contract by a nonprofit hospital service corporation.
3. The employee may not be terminated if the test result is positive and the employee agrees to participate in and then successfully completes the employee assistance program. However, the employee may be suspended only for the period of time necessary to complete the program, but in no event longer than three months. The employee may be terminated if, after completion of an employee assistance program, the employer subsequently administers a drug test and the test result is positive.
4. The drug test is administered in accordance with certain procedures under the law.

An employer cannot request, require or conduct random or company-wide drug tests except when such testing is required by federal law or regulation.

Blood samples. An employer cannot request or require that a blood sample be drawn for the purpose of administering a drug test.

Selection of laboratory. The employer's procedure for drug testing must incorporate all

provisions of the drug testing law, including using only laboratories designated by the Department of Health.

**Policies.** The employer must provide all persons tested for drugs with a written policy that identifies the circumstances under which persons may be required to submit to drug tests, the particular test procedures, the drugs that will be screened, a statement that over-the-counter medications and other substances may result in a positive test and the consequences of a positive test result.

### **Virginia Drug & Alcohol Testing General Guidelines**

Virginia has no general law dealing with drug testing in employment, but the state does have drug testing provisions for school bus drivers. Also, the workers' compensation law provides for premium discounts of up to 5 percent for employers with drug-free workplace programs that meet the requirements of the insurer. In addition, drug-free workplaces must be maintained by certain public contractors.

### **Washington Drug & Alcohol Testing General Guidelines**

A drug-free workplace program must meet certain confidentiality standards, and must contain all of the following elements:

- a written policy statement in compliance with the law
- substance abuse testing
- an employee assistance program
- employee education supervisor training

Employers may conduct random tests, or test on a reasonable-suspicion basis.

An employer with a drug-free workplace program must investigate each workplace injury that results in a worker needing off-site medical attention and require the employee to submit to drug and alcohol tests if the employer reasonably believes the employee has caused or contributed to the injury.

**Job applicants.** An employer with a drug-free workplace program must require job applicants to submit to a drug test after extending an offer of employment. The employer may use a refusal to submit to a drug test or a verified positive test as a basis for not hiring the job applicant.

**Test results.** Within five working days after receipt of a verified positive test result from the

laboratory, an employer must inform an employee or job applicant in writing of the positive test result, the consequences of the result, and the options available to the employee or job applicant.

A first-time verified positive test result may not be used as a basis to terminate an employee's employment, but a second verified positive drug or alcohol test result may be the basis for termination. Also, any violation of employer rules pertaining to alcohol and drugs after the first verified positive drug or alcohol test may result in termination.

Washington's drug-free workplace law does not prevent an employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules.

Reporting to State of CDL Positives and Refusals-to-Test - A refusal-to-test by a commercial motor vehicle driver must be reported to the Washington Department of Labor by any motor vehicle carrier, employer or consortium required to have a testing program when the Medical Review Officer (MRO) or Breath Alcohol Technician (BAT) has not done so. A refusal-to-test will be considered the equivalent of a confirmed positive test. An MRO or BAT may report transit driver positive tests to the Department of Labor only when: (1) the driver has been fired or has resigned; (2) grievance proceedings up to, but not including, arbitration have been concluded; and (3) the driver - at the time of firing or resignation - has not been cleared for reinstatement under the DOT regulations.

## **Washington, DC Drug & Alcohol Testing General Guidelines**

Testing of Public-Sector Employees/Those with Direct Access to Children - Public-sector employees (vehicle operators, employees in Human Services and Mental Health Services, and now in 2005 expanded to include those working with children) may be randomly selected for drug and alcohol tests under certain circumstances. The D.C. Council enacted "emergency legislation" to require mandatory drug and alcohol testing for District of Columbia employees who directly provide services to children. "Private providers" that contract with the District of Columbia, and each private entity licensed by the District government, who provide employees to work in safety-sensitive positions (essentially defined as positions with "direct contact with children or youth") also are subject to the above testing requirements.

Job applicants may be tested, may be offered a conditional offer of employment, and may start work in a non-safety-sensitive position prior to receiving the drug-test result. The District of Columbia government must give 30 days' advance notice prior to implementing any testing program, and no employee may be tested without being given that notice. An HHS-certified laboratory must be used for testing.

### **West Virginia Drug & Alcohol Testing General Guidelines**

West Virginia law contains no general provision related to drug/alcohol testing, but there is a drug testing law for all correctional employees. All prospective correctional employees must pass a preemployment drug screening prior to being hired.

### **Wisconsin Drug & Alcohol Testing General Guidelines**

Wisconsin law contains no general provision related to drug/alcohol testing.

### **Wyoming Drug & Alcohol Testing General Guidelines**

Wyoming law contains no general provision related to drug/alcohol testing.